



The Damned Dolls

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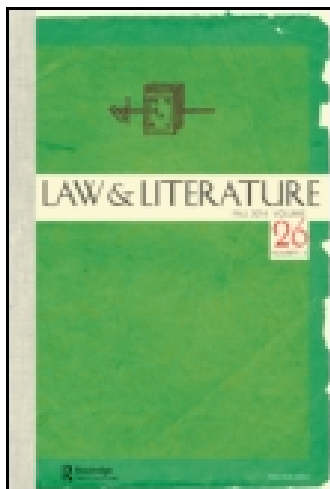
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The Damned Dolls

Bruce L. Hay

Abstract This article reads the *Brown v. Board of Education* case against the backdrop of the absurdist theater of the 1950s, a genre that flourished both in the art world and in the highly staged experiments of academic social psychology. I consider the case's resonances with the contemporaneous productions of Asch's conformity experiments and Beckett's *Waiting for Godot*.

Keywords Constitutional law, Warren court, inequality, conformity, social psychology, theater

Jesus Christ, those damned dolls! I thought it was a joke.
– NAACP lawyer William Coleman¹

The decision in *Brown v. Board of Education* arrived a little behind schedule, a year after Samuel Beckett's *En attendant Godot* had its world premiere in Paris.² Argued in the fall of 1952, the case ordinarily would have been decided by the spring of 1953. But the decision, like the play, was beset by production delays, owing to its novelty and controversial nature. The justices were divided, and at Felix Frankfurter's request, the case was held over for another round of argument the following term. That September, Chief Justice Vinson died suddenly, just before the second round of arguments. Frankfurter, appalled by Vinson's lack of leadership in the case, reportedly called his unexpected departure "the first indication I have ever had that there is a God."³ Earl Warren was appointed to replace Vinson, and with his prodding, the justices eventually reached agreement; Warren's unanimous opinion for the court was handed down on May 19, 1954.⁴ And so *Brown* appeared a year after *Godot*, which seems sadly fitting: everyone was kept waiting a little longer.

While the court was deciding what, in retrospect, has come to seem a rather elementary legal question about equality, social psychologist Solomon Asch of Swarthmore College was conducting his famous conformity experiments. A group of individuals – whose size, interestingly, was often nine⁵ – would be asked to judge the relative length of adjacent line segments displayed in the front of the room. Everyone would say, with a straight face, that two lines of manifestly unequal length were in fact of the same length. The subject of the experiments, puzzled at

what the others were saying, would nonetheless go along with them – never realizing that they were the experimenter’s confederates, acting according to a script they had been coached on before the subject arrived. Over the course of twelve trials, many subjects would agree with the (incorrect) group answer eight, ten, or even twelve times. Quite aside from their scientific merit, these experiments are a remarkable piece of stagecraft: with the starkness of a Beckett play, they seem to capture the absurd essence of a world in which a sequestered group of nine men could – not just once, but a dozen times – have declared “equal” things that, as plain as the eye can see, are not.

The three works went on the road, so to speak, in 1955. The court’s follow-up opinion concerning implementation of *Brown* (“all deliberate speed”) was issued in May of that year; *Godot*, translated into English, opened in London in August, soon to open in America; and Asch’s results appeared for the general reader in *Scientific American* in November.⁶ Audience reactions to all three were mixed at first, although they eventually became canonical in their respective domains. *Godot* inspired excitement, outrage, and bewilderment among both professional critics and popular audiences. Its American premiere in Miami in January 1956 was a flop, but the Broadway production later that year ran for a respectable ten weeks, and within a few years the play had been translated into twenty languages and seen by 1 million spectators. The conformity experiments were hugely influential among social psychologists, but many observers thought them too contrived and artificial to say anything about the real world, while others wondered about the ethics of deceiving and manipulating subjects as the experiments had done. As for *Brown*, there is no need to recount the critical and popular debates it aroused, or to describe its cool reception at venues such as Little Rock Central High in 1957.⁷

A *Tragicomedy in Two Acts*, Beckett called the English version of his play,⁸ apparently referring to the “mungrell Traggy-comedie” that Sir Philip Sidney once saw in the work of Elizabethan playwrights, work that had ignored the formal requirements of classical tragedy and lacked its decorum and solemnity.

But besides these grosse absurdities, how all theyr Playes be neither right Tragedies, nor right Comedies: mingling Kings & Clownes, not because the matter so carrieth it: but thrust in clownes by head and shoulders, to play a part in majesticall matters, with neither decencie, nor discretion. So as neither the admiration & commiseration, nor the right sportfulness, is by their mungrell Traggy-comedie obtained.⁹

As Beckett evidently discerned, these words aptly describe his own strenuous refusal to conform to the requirements of genre, letting “clownes” take over “majesticall matters” with utter contempt for representational conventions or

audience expectations. And so with *Brown*, whose author presided over a body that would become famous for disregarding, “with neither decencie nor discretion,” the conventions and expectations associated with constitutional law. “Majesticall” as its matter is, *Brown* is a drama tinged with absurdity that, I will argue in this essay, has its counterparts in the sort of “Tragy-comedie” being developed in the stage theater and also the experimental psychology of the period. The proceedings in *Brown* “put meaning on trial,” to borrow Adorno’s telling description of absurdist drama, and I suggest we can better understand them by looking at the parallel proceedings occurring in Asch’s lab and on Beckett’s stage.

I make two general claims in the essay. One, as I have already suggested, is that *Godot* and the conformity studies form a sort of interpretive frame for understanding the *Brown* litigation, by which I mean not only the decision itself but the history leading up to it and also its long aftermath. Though I have no reason to suppose this was their intention, it is almost as if Asch and Beckett set out to create an allegory of the case. I can scarcely imagine a better metaphor for the legal system’s adherence to the fraudulent “separate but equal” doctrine of *Plessy v. Ferguson*¹⁰ than the “shorter but equal” doctrine on display in the conformity experiments. I can also scarcely imagine a better metaphor for the court’s difficulties in rendering a decision than the story of the hapless Vladimir and Estragon, unable to make a move, unsure whether to side with the landowner or the slave. These correspondences should not be entirely surprising: part of the reason Asch and Beckett’s works remain so well known is that they seem to capture so effectively the psychic and political landscape of the postwar world, as well as the more general dynamics by which individuals are blinded or paralyzed in the face of injustice. (American racial segregation is only one of many historical injustices that might be viewed through the lens of these works.) Still, it is worth remarking on how effectively they seem to capture the essence of the litigation.

My second claim concerns Warren’s opinion in the case, notorious for its terseness and its reliance on social psychology research rather than on conventional legal authorities. I suggest we look at the opinion in terms of the spare, bleak aesthetic of Asch and Beckett’s work, which share with Warren’s opinion the overarching sense that language is more or less dead. *Brown*’s refusal to speak the language of constitutional law, a language discredited by its complicity in legalized segregation, finds its echo in the tendency toward silence in *Godot* and the conformity experiments, both of which are centrally about the evacuation of meaning and the corruption of speech. That is also how I view the most controversial element of the *Brown* opinion: its reliance on Kenneth and Mamie Clark’s experimental studies of segregation’s effects on schoolchildren, in which black pupils reject dark-skinned dolls in favor of white-skinned ones. Critics have endlessly debated whether the court was right to give “social science” such a prominent place in the opinion. Without denying the importance of these debates, I propose to think of the Clark

studies in theatrical rather than scientific terms, as a dramatic work, embedded within the larger performance that constitutes *Brown*.

My purpose here is interpretive, not evaluative; I want not to judge the *Brown* court, but rather to understand it in terms of cultural currents that, while familiar to most readers, have not previously been brought to bear on the interpretation of the case. The essay is meant as a contribution to what might be called the cultural poetics of law, whose working hypothesis is that legal decisions are part of a complex representational network in which the lines separating legal, artistic, scientific, and other forms of cultural production are porous and unstable.¹¹ Part I sets the stage, introducing absurdist theater as a sort of aesthetic paradigm and looking at some of the continuities between *Godot* and the conformity experiments. Part II looks at the history leading up to *Brown* against the backdrop of Asch and Beckett's work. Part III looks at the aesthetic of the *Brown* opinion, with special attention to the "damned dolls." Part IV focuses on the period since the *Brown*, discussing ways in which Asch and Beckett illuminate the events that came after the decision and its contemporary place in American jurisprudence.

I

Let me start by remarking on the flourishing of tragicomic theater during the Warren Court years, which takes place in the psychology laboratory as well as on the stage. It seems to me that the era's experimental psychology scarcely differs from its experimental theater, either in the formal devices employed – nonsensical situations, pointless actions, bored or confused individuals confined to small spaces, and so on – or in the bleak picture of humanity and of social institutions that emerges. Think of Festinger's cognitive dissonance experiments, in which subjects, having told someone else they enjoyed an hour spent twisting knobs on a board and emptying and refilling a tray of spools, conclude they must really have enjoyed it;¹² Sherif's "Robbers Cave" group conflict experiments, in which subjects divided into arbitrary groups quickly become bitter enemies¹³ Darley and Latane's bystander apathy experiments, in which subjects ignore a woman's screams, or ignore smoke pouring in from the ceiling, because that is what others in the room are doing;¹⁴ and of course Milgram's obedience experiments, in which the subjects administer electric shocks to an individual who is trying to learn random pairings of words.¹⁵ Whatever else these works may be, they are performances, with the same alternately farcical and terrifying quality that characterizes plays like Ionesco's *Rhinoceros*, Pinter's *The Birthday Party*, Genet's *The Balcony*, Albee's *Who's Afraid of Virginia Woolf?*, and other contributions to the absurdist theater of the 1950s and 1960s.

The psychologists, it has since become clear, were quite aware of the dramaturgical dimension of their work.¹⁶ What has not been sufficiently appreciated, I think, is the similarity that their "genre" of production bears to the genre of absurdist drama that we see emerging at roughly the same time in the 1950s. Both are

animated by the same general idea: conventional naturalistic representations of human behavior must go. For the playwrights, this means no longer observing the usual requirements of coherent plot, dialogue, scenery, characterization, and other elements of what Beckett called the “grotesque fallacy of realistic art,”¹⁷ elements that are now to be replaced with barren landscapes, nonsensical language, malleable identities, and barely intelligible events such as dominate the modern world. For the psychologists, it means no longer observing people in the outside world, shifting instead to carefully constructed settings in which the researcher can manipulate different features of the situation and remove extraneous influences. To get the subjects to “act naturally” in the artificial setting, the researcher uses the full apparatus of the theater – scripts and sets, props and costumes, amateur and professional actors, endless rehearsals before the subjects arrived – to conceal from them the existence of the experiment, or to mislead them about its true purpose. The resulting images are practically indistinguishable from those produced by the playwrights: nondescript individuals trapped in bewildering environments; behavior governed by situational forces that the agent does not begin to comprehend; language reduced to meaningless babble; cultural mores and social institutions exposed as pious frauds.

The line between theater and reality is continuously blurred in these genres, which is partly what accounts for their absurd quality. It is not only that the protagonists – or the subjects – are unwittingly surrounded by actors and props, all according to a script they know nothing about. It is also that they become part of the performance, conforming their thoughts and actions to the role that has been created for them, however crazy it may be. They become the characters the scene requires – oblivious sheep in the bystander experiments, vicious guards in the prison study, and so on – unhampered by any beliefs, loyalties, or even identities apart from those foisted upon them by the situation. This is also a central motif in the drama of the period, for example in the role-playing games in Albee, where the guests play “guests” and the hosts play “hosts,” or in the empty, cliché-ridden dialogue of Pinter and Ionesco, whose characters, unable to think or speak for themselves, are at the mercy of whatever words pop into, or are put into, their heads. In the cognitive dissonance studies, the subjects are given some lines to recite about how interesting it is to twist knobs and arrange spools in a tray for an hour; then, having recited them, they decide the lines must be true. The episode might have been lifted straight from *The Bald Soprano*, in which the husband and wife deduce they must be a couple, because they live in the same house on the same street and sleep in the same bed.

Academic psychologists were not alone in producing images so close in spirit to the tragicomedies of the period. Other students of human behavior followed similar paths, out of a shared sense that the representational conventions of their respective disciplines were largely bogus. Sociologist Erving Goffman, dropping the rationalist–functionalist approach that dominated the field, developed a dramaturgical

model in which social interactions are stage performances governed by multiple, conflicting sets, roles, and scripts of which agents are scarcely aware. Existentialist philosophers made frequent use of theatrical metaphors in speaking of the mindless automaticity with which most people live their lives, as though acting out stage directions written by others. Hannah Arendt's study of Eichmann and the Holocaust – the historical occurrence that forms the subtext of much of the work I am describing – rendered the defendant, who had cheerfully overseen the murder of 5 million people, in terms that made him out to be equally villain and buffoon, his actions unaccompanied by original thoughts of any kind. Evil, according to her controversial thesis, wore the face not of a diabolical monster, but of an essentially vapid, almost vaudevillian figure whose cliché-ridden speech resembled a badly memorized script.¹⁸ Many differences separate these works, but they touch the same nerve as the absurdist theater of the period, and develop some of the same representational strategies. It is probably no coincidence that the experimental psychologists, grappling with similar problems, should have done so as well. Nor is it a surprise to find that when they turned to writing plays, the results have deep correspondences with those produced by the (other) experimental playwrights of the period.

Many such correspondences might be pursued, but the ones that will interest here are those between *Godot* and the conformity studies, whose visions of the world are almost seamlessly connected. The lone tree comprising Beckett's landscape is complemented by the four simple lines comprising Asch's, figuring a world reduced to the most elemental conditions, in which even the simplest propositions are in doubt. There are no signposts of meaning anywhere, no authority figures around to guide thought and action, and everyone seems to have taken leave of his senses. Nothing much happens, beyond the lines changing length, the tree sprouting leaves, and the protagonists in both works settling in to a routine of thoughtless habit, endlessly repeated. ("Nothing happens, twice," Vivian Mercer observed of *Godot*'s two repetitious acts¹⁹. Of all the terrors in this world, the prospect of being alone, of acting independently, is most unbearable; Vladimir and Estragon say they should part but cannot, and even Lucky, Pozzo's servant, seems reluctant to leave the master who whips him, addresses him as "Pig," and drags him around with a rope around his neck. And yet there is nonetheless a countervailing desire for individual integrity, a sense that dependence on others is a guilty pleasure. Speaking in interviews after the last trial – but before being told what was really being tested, and that the other subjects were confederates of the experimenter – many compliant Asch subjects nonetheless speak of the importance of independent thought, and some criticize the *others* for being overly conformist, as in this snippet from a subject who conformed eight times out of twelve:

Q. How did you feel when you continued to give answers different from the others?

A. Doesn't bother me. Would just as soon disagree, usually do.

Q. Would you say you were disturbed about the disagreements?

A. Not a bit. Took it rather easily. [. . .]

Q. How do you explain [the answers of the others]?

A. Sometimes I felt they all were going along with the first guy who answered. Not much strength of mind.

Q. What did you think about the other people in the group when they all gave an answer that looked wrong to you?

A. Most people are sheep anyhow.²⁰

That slightly deluded stance is a frequent theme of Beckett's, as in the colloquy about the two thieves.²¹

VLADIMIR: Ah yes, the two thieves. Do you remember the story?

ESTRAGON: No.

VLADIMIR: Shall I tell it to you?

ESTRAGON: No.

VLADIMIR: It'll pass the time. (Pause.) Two thieves, crucified at the same time as our Saviour. One –

ESTRAGON: Our what?

VLADIMIR: Our saviour. Two thieves. One is supposed to have been saved and the other [. . .] (he searches for the contrary of saved) [. . .] damned.

ESTRAGON: Saved from what?

VLADIMIR: Hell.

ESTRAGON: I'm going.

He does not move.

VLADIMIR: And yet [. . .] (pause) [. . .] how is it – this is not boring you I hope – how is it that of the four Evangelists only one speaks of a thief being saved. The four of them were there – or thereabouts – and only one speaks of a thief being saved. [. . .]

ESTRAGON: Well? They don't agree and that's all there is to it.

VLADIMIR: But all four were there. And only one speaks of a thief being saved. Why believe him rather than the others?

ESTRAGON: Who believes him?

VLADIMIR: Everybody. It's the only version they know.

ESTRAGON: People are bloody ignorant apes.

The irony here is multilayered: the thief in question was a nonconformist, as was the evangelist who singled him out, yet the masses unthinkingly flock to his story because everyone else does.²² Estragon, making fun of their mindless conformity, does not realize he is referring to himself. He has already revealed his ignorance; in



Figure 1. The Asch Experiments. Subject is Third From Right.

a few moments he will be bloodied from a kick to the shins. And so with the Asch subject above, making fun of people for being sheep.

Alongside the humor, there is a genuinely moving quality to the Asch subject interviews, with frequent references to loneliness, self-doubt, damned if you do, and damned if you don't. Confronted by the interviewer with the fact that they gave the same (wrong) answers as the group, the Asch subjects who conformed seldom say they thought these were actually the *correct* answers. What they tend to say, instead, is that the group's behavior caused them to doubt the accuracy of their own judgments, while at the same time making them worry about being seen by the others as weird (or communist, this being the 1950s). Several defend their actions by invoking their version of the "counter-majoritarian difficulty": if in doubt, go with the majority, though you do not necessarily agree with them.

After all, the majority rules, so I guess I was wrong.²³

Who am I to disagree with everyone? [...] If there's an equal balance between two alternatives, I think it natural and right to permit the majority to influence your answer.²⁴

When you're in a crowd, who's supposed to know?²⁵

More sinister references creep in, alongside the appeals to majority rule. Some subjects speak of mob psychology having taken over the room, though the confederates exerted no overt pressure on anyone.²⁶ One subject recalls his own experience as bystander to a lynching.

At the conclusion, in the course of a general conversation, he expressed the view that *the duty of a government is to do the will of the majority, even if you are convinced they are wrong*. Suppose it concerned a lynching? *I wouldn't want to stand in the way, I've seen one. It's like a tide – they'd trample me over – I was run over.*²⁷

This is Asch's only allusion to racial questions, with the possible exception of his remark that the experiments expose the willingness of reasonable, good-willed people "to call white black."²⁸ As the passage just quoted suggests, however, it is hard not to detect the subject lurking between the lines of his study, just as it is hard not to associate the subject with Beckett's play. *Godot* is set in Europe,²⁹ but other places also come to mind when we hear the crack of the whip, see the rope around the neck of the one addressed as "slave," and hear references to hanging people from the tree.

II

In his celebrated 1960 defense of the *Brown* decision, Charles Black suggested that to the question presented in the case – does racial segregation violate equal protection? – the correct answer was laughter.³⁰ By this he meant not, of course, that the case was funny, but rather that it was absurd. A southerner who had grown up supporting segregation before having a change of heart, Black well understood the suffering Jim Crow caused its victims. But he also insisted in his article on its farcical character, the ridiculous pantomimes and double talk deployed to hide its grim realities, its utter debasement of language. (He notes the practice in many towns of giving the name "Lincoln High" to the Negro school.) "How long must we keep a straight face," he asked, when "we are solemnly told that segregation is not intended to harm the segregated race, or to stamp it with the mark of inferiority." Though too polite to say so directly, he strongly implies in his article that the language of constitutional law, which was having such a hard time assimilating the *Brown* decision into its conceptual apparatus, has also been corrupted. If it is capable of posing the question in the case seriously, if it is able to *ask* whether the system of segregation squares with the idea of equal protection, then there is nothing to be *said* in reply. Words have been drained of meaning, and nothing remains for an honest person except the vocabulary of laughter and tears. But not tears, Black seems to say, for those belong to tragedy. What we have here should not be dignified with that term: there are too many low human qualities in evidence, too much clowning and obscene wordplay, to call it tragedy. This is Tragy-comedie.

Looking back at *Brown*, it is hard not to see the absurd quality of the case that finally forced the court to reconsider the doctrine of "separate but equal." The story has been ably told many times,³¹ making it unnecessary to do more than recap the highlights here: the court announces the doctrine in *Plessy v. Ferguson* in 1896, and over the next five decades applies and elaborates it in not quite a dozen cases, of which six involve education.³² In the later cases, the product of the NAACP's carefully mapped strategy, the court adheres to the doctrine but weakens it, striking down several segregated graduate school programs on the grounds that the facilities for black students are inferior to the regular ones. In *Brown*, the court turns to

the question of segregation in primary and secondary schools. After oral argument in December 1952, the justices are sharply divided: Black, Douglas, Minton, and Burton are for holding school segregation unconstitutional; Vinson and Reed are against; Jackson and Clark are unsure but leaning against; Frankfurter, who hates segregation but believes in judicial restraint, is deeply conflicted.³³ Vinson dies and is replaced by Warren, who has no judicial experience but quickly impresses his colleagues with his managerial and coalition-building skills. After *Brown's* re-argument, the undecided justices are persuaded, one by one, to join Warren's opinion for the court. With the vote at 8–1, Stanley Reed tears up his draft dissent and joins as well.³⁴ In the end, the court speaks with a single voice, announcing that separate is unequal after all.

The entire story could be a send-up of Asch. The roomful of nine, acting in “confederacy” with the southern states, has been declaring shorter lines equal to longer ones for over fifty years. Now the NAACP has launched a new “trial,” seeking to overturn the “shorter but equal” doctrine. The case presents grave practical and theoretical questions. How is it that lines understood to be equal for so long can suddenly be deemed unequal? Some empirical evidence shows that, in practice, shorter lines are unequal to longer ones, but can such contingent data resolve a question of principle? Do the justices have the institutional competence to overturn the legislature's determination that shorter lines are equal to longer ones? Should they declare shorter lines to be per se unequal to longer ones, or should they continue to determine the matter on a case by case basis? And so on. Accounts of the individual justices' decisions to join Warren's opinion also read a bit like an Asch parody. The pro-*Plessy* justices think the case involves a matter of social policy best left to the states. However, if a majority of their colleagues feels differently, they will not stand in the way. For the good of the institution, they will join everybody else's view that shorter lines are unequal to longer ones. I am being a bit unfair here, and oversimplifying a complicated story, but I do not think the comparison to the mad logic of the conformity experiments is unwarranted.

Or look at the proceeding as a rendering of *Godot*. As the justices struggle with the question before them, we see – in the scribbled notes that have survived from their meetings, or in the remarkable memoranda written by Frankfurter and Jackson – the same odd blend of courage and fecklessness displayed by Beckett's protagonists, who must know no one is coming to get them out of this fix, but keep looking for someone (such as Congress) who will.³⁵ Much as they loathe segregation, the undecided justices are nearly overwhelmed by the temptation to shake their heads and exhale, *nothing to be done*. Frankfurter and Jackson, two of the sharpest minds ever to serve, are at once brilliantly incisive and mealy mouthed, staring unflinchingly into the void yet unable to make a decision. Jackson has to be practically ordered by his clerk to stop wringing his hands,³⁶ while Frankfurter's soliloquies on the anguish of responsibility are virtually cribbed from Beckett. Frankfurter to his colleagues:

Only for those who have not the responsibility of decision is it easy to decide these [school segregation] cases. This is so because they present a legal issue inextricably bound up with deep feeling on sharply conflicting social and political issues. The legal issue derives from the established practice of exercising judicial authority when appeal is made to vague provisions in the Civil War Amendments. While it has now been settled beyond question that some of the guarantees of the Constitution are not judicially enforceable, e.g., the guarantee of a republican form of government, amendments to the Constitution introduced in the reconstruction period, no less vague and no more appropriate for judicial judgment, serve as the basis for adjudication. The inevitable result is that issues are cast in legal form for disposition by this Court that are embroiled in explosive psychological and political attitudes [. . .].³⁷

Vladimir to Estragon:

Let us not waste our time in idle discourse! (*Pause. Vehemently.*) Let us do something, while we have the chance! It is not every day that we are needed. Not indeed that we personally are needed. Others would meet the case equally well, if not better. To all mankind they were addressed, those cries for help still ringing in our ears! But at this place, at this moment of time, all mankind is us, whether we like it or not. Let us make the most of it, before it is too late! Let us represent worthily for once the foul brood to which a cruel fate consigned us! What to do you say? (*Estragon says nothing.*) It is true that when with folded arms we weigh the pros and cons we are no less a credit to our species. The tiger bounds to the help of his congeners without the least reflexion, or else he slinks away into the depths of the thickets. But that is not the question. What are we doing here, *that* is the question. And we are blessed in this, that we happen to know the answer. Yes, in this immense confusion one thing alone is clear. We are waiting for Godot to come —³⁸

Then, unexpectedly, a man *does* come. Could this be the person for whom everyone has been waiting? That is what his colleagues are inclined to think, after they get over their initial uncertainty about his identity.³⁹ Godot, it turns out, is none other than the former governor of California, arrived to cure them of their hesitations and to write an opinion they can all join.

All of this must sound terribly critical of the court, but it should not. The justices are not, after all, the only actors in this little drama. We are watching plays within plays here: on one level the court is performing for the rest of the country, while on

another the country is performing for itself and for the rest of the world.⁴⁰ Pressing the *Godot* analogy, it is not only the justices who have waited around for someone to “make us all live up to our hypocrisies,” as Jackson put it.⁴¹ If the court is miles behind where it should be, it is miles ahead of nearly everyone else in power at the time. (“We are not saints, but we have kept our appointment. How many people can boast as much?”⁴²) Pressing the Asch analogy, the court might be compared to one of those brave subjects who, having gone along with all the “confederates” up until now, look apprehensively around the room, bite the bullet and say what they actually see. It is a brave act, even if it takes the persistent nudging of the NAACP to get the court to do it. The precedents are all against it; the framers are silent, or rather say different things at different times; and the rest of the government is mostly comfortable with the status quo. The court is all alone here, with no authority figure to tell it what to do or to protect it from the harsh disapproval of all the confederates in the room.

This is no small predicament. It is all very well for a nonconforming Asch subject, priding himself on his independence, to simply thumb his nose at everyone around him, but this is not something the court, ever mindful of the switch in time that saved nine, can do to the rest of the country. The justices cannot desegregate the schools, and neither can the lower federal courts, without the cooperation of coordinate branches at both the state and federal level. Moreover, this is not a seminar room filled with polite college students looking at drawings on a board. The “confederates” in this experiment are the real thing: just look at the stars-and-bars flags soon to be hanging over their state capitols. School segregation, in their minds, is essential to preserving racial purity and the southern way of life, which means keeping young black males away from young white females, with ropes if necessary. Fourteen-year-old Emmett Till will shortly be murdered for crossing the color line, and his killers promptly set free. The justices cannot predict in 1953 the massive resistance and racial hysteria their decision will produce, which will far exceed what the southerners among them are warning of, but they know trouble is coming. Easy as the case must seem from our vantage point, it is not easy from theirs, a point that my irreverent account is not intended to obscure. On the contrary: the absurdity of the case lies precisely in the fact that it is so difficult.

How exactly *do* you “prove” that shorter lines are unequal to longer ones, when everyone around you is determined to believe otherwise? This is the predicament created by *Plessy*’s “separate but equal,” a fiction that has an uncanny resemblance to Asch’s “shorter but equal,” both in its patent falsity and in the process by which it is maintained. Its premises – that Jim Crow treats blacks and whites alike, that it is not a caste system designed to brand some citizens as inferior, that the harm it causes is purely in the victim’s imagination – requires of its adherents the same queer suspension of disbelief we see on display in Asch: the determination to ignore the evidence of one’s senses, the surrender of individual subjectivity to the demands of mass psychology, the pervasive use of denial and rationalization.⁴³ No one

actually believes, in the 1940s or 1950s, that separate is equal; no one really believed it back in the 1890s either. But neither is it true to say that *Plessy*'s supporters are just lying. Instead they occupy, to all appearances, the same ambiguous space staked out by the Asch subjects, not quite believing the majority answer but not quite disbelieving it either, or believing and disbelieving it at the same time, like the $2 + 2 = 5$ people in Orwell's *1984*.⁴⁴ It makes no difference that the doctrine's fraudulence becomes clearer with each passing year: the longer the fiction is maintained, the more its adherents are motivated to protect their psychic investments in a principle "so often pronounced, so confidently relied upon, so long continued, that it passes the limits of judicial discretion and disturbance."⁴⁵ In experimental psychology circles, this process of molding one's convictions to conform to one's actions will soon be called dissonance reduction.⁴⁶ In legal circles, it is called stare decisis.

"The fact would seem to be, if in my situation one may speak of facts," a Beckett character says, "that I shall have to speak of things of which I cannot speak."⁴⁷ What do you say to the confederates, by which I mean both the practitioners of separate but equal in the south and their enablers everywhere else in the country? In what language do you say it? Separate but equal cannot be attacked on "legal" grounds because it is woven into the law, together with the institutional doctrines that support it – deference to the political branches, state sovereignty, limited federal power, respect for precedent, and so on. But it cannot be attacked on "factual" grounds either, because the *facts* of segregation lie in the domain of "sociology," not law. The charge of speaking "sociology" will frequently be leveled at the NAACP and later the court, whenever either of them raises the subject of the real nature of segregation, or tries to talk about the way it operates in the world rather than in the fictional universe of the law.⁴⁸ To watch them caught in this dilemma – trapped between the corrupted discourse of law and the forbidden discourse of fact – is to watch individuals wandering through a communicative void, compelled to speak of things of which they cannot speak, to represent the seemingly unrepresentable. In the end they have to rely on the dolls.

III

Those damned dolls, William Coleman dubbed them, recalling the battles within the NAACP legal team over whether to use the experiments that would ultimately become Exhibit A in the case, both in the plaintiffs' appellate brief and in the famous footnote 11 of the court's *Brown* opinion. Taken in a slightly different sense than the one he intended, I think Coleman's remark goes to the heart of the matter. As "proof" that separate is unequal, Kenneth and Mamie Clark's studies of preschoolers playing with dolls have always had strong detractors, starting with the dissenting NAACP lawyers who argued that the court would never take such evidence seriously. As a piece of experimental theater, though, the studies are

unforgettable, which is no doubt why Thurgood Marshall and Robert Carter opted to give them center stage in the case.⁴⁹ Here is Kenneth Clark testifying in the trial court proceedings.

A. I made these tests on Thursday and Friday of this past week at your request, and I presented it to children in the Scott's Branch Elementary school, concentrating particularly on the elementary group. I used these methods which I told you about – the Negro and White dolls – which were identical in every respect save skin color. [...] I presented these dolls to them and I asked them the following questions in the following order: "Show me the doll that you like best or that you'd like to play with," "Show me the doll that is the 'nice' doll," "Show me the doll that looks 'bad,'" and then the following questions also: "Give me the doll that looks like a white child," "Give me the doll that looks like a colored child," "Give me the doll that looks like a Negro child," and "Give me the doll that looks like you."

Q. "Like you?"

A. "Like you." That was the final question, and you can see why. I wanted to get the child's free expression of his opinions and feelings before I had him identified with one of these two dolls. I found that of the children between the ages of six and nine whom I tested, which were a total of sixteen in number, that ten of those children chose the white doll as their preference; the doll which they liked best. Ten of them also considered the white doll a "nice" doll. And, I think you have to keep in mind that these two dolls are absolutely identical in every respect except skin color. Eleven of these sixteen children chose the brown doll as the doll which looked "bad." This is consistent with previous results which we have obtained testing over three hundred children [...].

Q. Well, as a result of your tests, what conclusions have you reached, Mr. Clark, with respect to the infant plaintiffs involved in this case?

A. The conclusion which I was forced to reach was that these children in Clarendon County, like other human beings who are subjected to an obviously inferior status in the society in which they live, have been definitely harmed in the development of their personalities; that the signs of instability in their personalities are clear, and I think that every psychologist would accept and interpret these signs as such.

Q. Is that the type of injury which in your opinion would be enduring or lasting?

A. I think it is the kind of injury which would be as enduring or lasting as the situation endured, changing only in its form and in the way it manifests itself.

Mr. Carter: Thank you. Your witness.⁵⁰

The methodological objections here are well known: no control groups, insufficient sample sizes, no statistical analyses; no way of determining the extent to which segregation rather than other factors accounts for the experiments' results, which are actually more pronounced in northern states than in southern ones.⁵¹ Yet for all that, the experiments are surely a masterpiece of absurdist drama, as powerful as anything the genre has produced. Using the usual anti-naturalistic trappings – solitary characters, empty sets, minimal narrative, nonexistent dialogue – it enacts a kind of nightmare of meaninglessness and dehumanization. Toys and child's play, normally signs of pleasure and self-expression, instead signify self-negation and despair. Without speaking a word ("Show me," "Hand me,"), humans become interchangeable with inanimate objects, and push away the ones they most identify with. A playwright could scarcely render more vividly the modern world's version of damnation – of the destruction, if not of the soul, then of the self.

Dolls in *Brown*, lines in Asch, hats in *Godot*. In all three, simple objects are used to convey the erosion of subjectivity and the evacuation of meaning in a



Figure 2. Kenneth Clark and a Young Subject, 1947

world in which language, like Lucky, has reached the end of its tether. In Asch, the universe has been reduced to black lines on a white background, the English language is down to a primitive vocabulary of just three letters. Even these elementary signs quickly become unreliable, as everyone says A or B when the correct answer is C. Nothing is certain, discussion is impossible, and the subjects are induced to surrender their very subjectivity. They come to resemble the lines themselves, stretching or contracting as the experiment shows the next card, producing “the identity of subject and object in a state of complete alienation.”⁵²

In *Godot* the landscape contains only a few pathetic knickknacks, mostly ill-fitting clothing and smelly, worn-out shoes, which form the lifeworld of characters who are unsure whether to keep them or throw them away. They complement the half-buried allusions to a ruined European culture, itself now buried beneath ashes of war and mass murder.⁵³ Words being complicit in the crime, it is only discarded objects that can bear witness to a century of unspeakable atrocity.⁵⁴

ESTRAGON: In the meantime let us try and converse calmly, since we are incapable of keeping silent.

VLADIMIR: You're right, we're inexhaustible.

ESTRAGON: It's so we won't think.

VLADIMIR: We have that excuse.

ESTRAGON: It's so we won't hear.

VLADIMIR: We have our reasons.

ESTRAGON: All the dead voices.

VLADIMIR: They make a noise like wings.

ESTRAGON: Like leaves.

VLADIMIR: Like sand.

ESTRAGON: Like leaves.

Silence.

VLADIMIR: They speak all at once.

ESTRAGON: Each one to itself.

VLADIMIR: Rather they whisper.

ESTRAGON: They rustle.

VLADIMIR: They murmur.

ESTRAGON: They rustle.

Silence.

VLADIMIR: What do they say?

ESTRAGON: They talk about their lives.

VLADIMIR: To have lived is not enough for them.

ESTRAGON: They have to talk about it.

VLADIMIR: To be dead is not enough for them.

ESTRAGON: It is not sufficient.

Enslaved Lucky cannot speak except when he wears his hat, which for that reason the others are careful to keep from him. Midway through his famous monologue on the sufferings of those who “for reasons unknown are plunged in torment,” his hat is taken and stomped on, rendering him silent for the duration. His master Pozzo will do the talking for him. He is not spared, in Maurice Blanchot’s formulation, “the worst degradation, that of losing the power to say *I*.”⁵⁵

Part of the pathos of the doll experiments is their resistance to interpretation, their inability to speak clearly on the matter at issue in *Brown*. What are they saying, these children who need dolls with which to speak, who have lost the power to say *I*? To the Clarks, whose interpretation was advanced by the plaintiffs and accepted by the court, they were saying that segregation had filled them with a sense of inferiority. To the *Brown* defendants, they were saying precisely the opposite: the experimental results were most pronounced in the northern states; did this not suggest that black children were actually better off in segregated southern classrooms, where they were not placed side by side with pupils to whom they considered themselves inferior?⁵⁶ Twisted as the defendants’ position is, it is perfectly logical, and the experiments themselves provide no basis for choosing between it and the contrary interpretation. As critics never tired of pointing out, the Clark studies give no clear signal about segregation as such, because they do not disentangle it from other possible causes of the subjects’ behavior, from the myriad reasons they might view themselves as less than equal to white children. Segregation may be one of those reasons, but that is precisely the question to which the experiments fail to answer. And so on the crucial issue, the one on which they have been called to testify, the doll children are unable to make themselves heard or understood. They suffer for reasons unknown. Rather than “proving” separate is unequal, the Clark experiments only seem to confirm the sense that such proof is impossible, in any language the law is able to comprehend. Like Russian dolls or Chinese boxes, the experiments are a further iteration of the communicative void at the heart of the case, each door opening to another identical door. The dolls are silent, the children are silent, and ultimately the experiments are silent.

As, in the end, is the *Brown* opinion that embeds them. Written, in the words of its author, to “be short, readable by the lay public, non-rhetorical, unemotional and, above all, non-accusatory,” the opinion is a document of compromise, as the historians have shown, designed to win over both the doubting justices and such parts of the country as are willing to listen. I am not aware of evidence that the Chief Justice, or anyone else on the court, was actually influenced by the Clark studies or the other “sociological” material referred to in the opinion’s famous footnote 11, cited as discrediting the *Plessy* opinion’s view that the harms of segregation are purely imaginary. Yet whatever its author’s thoughts or intentions were, the opinion is suffused with the same mood of silent renunciation as the doll experiments, a “wordless thing in an empty space.”⁵⁷ Notoriously, it is a virtual

burlesque of traditional legal reasoning, barely going through the motions of discussing cases and other conventional sources of constitutional law, bits of which are strewn about in the opinion like so many tattered articles of worthless clothing. The body of social science material is compressed into a single paragraph and put in the margin, as if in mock deference to the law's tradition of keeping its texts free of material that might puncture the separate but equal fiction. Buried in footnote 11, the doll experiments become a sort of set piece, almost a *mise-en-abîme* summing up the opinion as a whole, much as Lucky's actions in *Godot* – the meaningless tasks he is given, the performances he is ordered to put on, his interrupted monologue about senseless suffering – capture the larger work that contains them. As the children reject the doll that looks like them, the *Brown* opinion pushes away the objects made in the court's image, which means not just the *Plessy* fraud but the whole apparatus of constitutional law that made it possible. If the opinion is “non-rhetorical, unemotional, and, above all, non-accusatory,” it is so in the same way *Godot* is, its indictment of an entire culture refracted through its vaudeville surface.

Warren's opinion, like Beckett's work, frustrated many observers with its terseness, its refusal to explain itself, a condition neither writer was inclined to remedy. Beckett was forever reticent about the play's meaning and the title character's identity (“If I knew, I would have said so in the play”), dismissing attempts to interpret the work as an allegory of some kind, insisting that the resemblance between the words *Godot* and *God* was accidental.⁵⁸ So far as I know he never said much more than what he told in a much-quoted 1956 letter to critic Harold Hobson, who had championed the play in London after early negative reviews almost shut down the production.

I take no sides. I am interested in the shape of ideas even if I do not believe in them. There is a wonderful sentence in Augustine. I wish I could remember the Latin. It is even finer in Latin than in English. “Do not despair, one of the thieves was saved. Do not presume, one of the thieves was damned.” That sentence has a wonderful shape. It is the shape that matters.”⁵⁹

The thieves again: associated, as I suggested before, with the dangers of going along with the crowd, here the story is associated with purity of language. Warren and his colleagues, of course, being in a very different line of work, would never have assigned the same priority to matters of aesthetic form. Yet neither he nor anyone else on the court ever felt obliged to supply a rationale for overruling *Plessy*, beyond what was said in *Brown* itself: future decisions banning segregation in places other than schools would take the form of one-sentence *per curiam* opinions, with no explanation provided at all. As in Beckett, the refusal to conform is tied to economy of expression, to the refusal of degraded means of communication.

This, it seems to me, is one way of understanding the decision to give the last word to the damned dolls.

IV

While it was clearly a big turning point, the *Brown* decision did not mark the end of the national conformity experiment of which it was a part. The court's opinion did not succeed in "proving" the shorter but equal confederates wrong, at least in their eyes. On the contrary, it only induced them to reveal their true colors, as several states changed their flags to include the Stars and Bars of the old confederacy. The "massive resistance" to desegregation in the south involved widespread repression of dissent, eventually forcing the court to issue a series of First Amendment decisions in the late 1950s and early 1960s.⁶⁰ Political moderates were voted out of office or changed their tune; investigative machinery was created to identify members of the NAACP; individuals, white or black, who spoke in favor of integration lost their jobs, received death threats, were firebombed out of their homes; television stations refused to air national programs discussing integration. "[T]he South has room for only one viewpoint," an Alabama legislator announced, advocating the purging of libraries. Ostracized as traitors, the lower court federal judges charged with implementing *Brown* were aptly described at the time as Fifty-Eight Lonely Men.⁶¹

The *Godot* performance continued as well. If *Brown* encouraged anyone to think that the savior had arrived at last, wearing a black robe, the illusion was punctured the following year when the court took up the question of remedy in the *Brown II* opinion, issued in May 1955. The "all deliberate speed" formula, which Warren got from Frankfurter, made the court look a lot like the well-meaning little boy who announces that Mr. Godot will not be coming today, but may perhaps come tomorrow. The Montgomery bus boycott commenced a few months afterward, led by a young minister whose position, in essence, was: time to stop waiting, because no one is coming. A few years later, with the civil rights movement in full swing and Beckett's play a worldwide sensation, explicit connections would be drawn between them. *Godot* was a staple of the Free Southern Theater, a touring group formed by civil rights activists in 1963, whose performances before predominantly black audiences in the deep south – part theater, part community organizing – were closely monitored by the White Citizens Councils and the police, and often interrupted by violence.⁶² Before the performances, the director would tell the audience members that *they* were the real performers, a "statement that occasionally was taken literally when a spectator would step up onto the stage."⁶³ Lucky, played by a black actor, would appear with a rope around his neck held by Pozzo, played by a white actor, an image that made the performance's political significance hard to miss.⁶⁴ When Vladimir and Estragon spoke of waiting for the title character, members of the audience would chime in, "We're *not* waiting!" – a sentiment echoed by the bus boycott leader in his manifesto: *Why We Can't Wait*.⁶⁵

1. NAACP lawyer William Coleman, quoted in Richard Kluger, *Simple Justice* (New York, NY: Vintage, 2004), 321.
2. Written in October 1948–January 1949, *En attendant Godot* opened at the Théâtre de Babylone on January 5, 1953. Director Roger Blin had agreed in 1950 to produce and direct the play, but it took several years to raise the necessary money and book a suitable theater; James Knowlson, *Damned to Fame: The Life of Samuel Beckett* (New York, NY: Simon & Shuster, 1996), 384–7.
3. Kluger, *Simple Justice*, 543–750.
4. *Brown v. Board of Education*, 347 U.S. 483 (1954). For comprehensive studies of the *Brown* proceedings in the Supreme Court, see Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York, NY: Oxford University Press, 2004), 292–312; and Mark Tushnet, “What Really Happened in Brown,” *Columbia Law Review* 91 (1991): 1867. Kluger, *Simple Justice*, 543–750, remains the leading journalistic account.
5. The groups varied in size from seven to nine; Solomon E. Asch, “Studies of Independence and Conformity: In a Minority of One against a Unanimous Majority,” *Psychological Monographs: General and Applied* 70, no. 9 (1956): 3.
6. Solomon Asch, “Opinions and Social Pressure,” *Scientific American* 193, no. 5 (November 1955): 31. His comprehensive academic monograph on the subject was accepted for publication in October 1955; Asch, “Studies of Independence and Conformity.”
7. On the play’s early reception, see Knowlson, *Damned to Fame*, 387–423; and Anthony Cronin, *Samuel Beckett: The Last Modernist* (New York, NY: HarperCollins, 1997), 421–57. Some early reviews are collected in L. Graver and R. Federman, ed., *Samuel Beckett: The Critical Heritage* (London: Routledge, 1979), 88–115.
8. Samuel Beckett, *Waiting for Godot: A Tragicomedy in Two Acts* (1954) (hereafter, “*Godot*”).
9. Quoted in Ruby Cohn, *Samuel Beckett: The Comic Gamut* (New Brunswick, NJ: Rutgers University Press, 1962), 224.
10. *Plessy v. Ferguson*, 16 S.Ct. 1187 (1896).
11. Cf. Stephen Greenblatt, “Towards a Poetics of Culture,” in *The New Historicism*, ed. H. Aram Veesser (London: Routledge, 1989), 1.
12. L. Festinger and J.M. Carlsmith, “Cognitive Consequences of Forced Compliance,” *Journal of Abnormal and Social Psychology* 58 (1959): 203.
13. Muzafer Sherif, *Intergroup Conflict and Cooperation: The Robbers Cave Experiment* (Norman, OK: University Book Exchange, 1961).
14. Bibb Latane and John Darley, “Bystander ‘Apathy,’” *American Scientist* 57 (1969): 244.
15. Stanley Milgram, “Behavioral Study of Obedience,” *Journal of Abnormal and Social Psychology* 67 (1963): 371. Other, later examples include the Stanford prison experiment, in which subjects are quickly transformed into abusive guards and submissive inmates; or the good Samaritan studies, in which the subjects, who are seminary students, step over a man slumped in an alley because they are in a hurry to deliver a lecture — on, of all things, the parable of the Good Samaritan; Craig Haney, Curtis Banks and Philip Zimbardo, “Interpersonal Dynamics in a Simulated Prison,” *International Journal of Criminology and Penology* 1 (1973): 69; J.M. Darley and C.D. Batson, “From Jerusalem to Jericho: A Study of Situational and Dispositional Variables in Helping Behavior,” *Journal of Personality and Social Psychology* 27 (1973): 100.
16. “Leon was a regular Lee Strasberg and the rest of us felt ourselves to be a part of the Actor’s Studio,” psychologist Elliot Aronson has recalled of his graduate work with Leon Festinger on cognitive dissonance studies; quoted in James H. Korn, *Illusions of Reality: A History of Deception in Social Psychology* (Albany, NY: State University of New York Press, 1997), 90.
17. Samuel Beckett, *Proust* (1931).
18. The Eichmann trial itself has drawn frequent comparisons to theater; e.g., Arendt; Susan Sontag, “Reflections on the Deputy,” in *The Storm Over The Deputy*, ed. Eric Bentley (New York, NY: Grove, 1964) (calling the Eichmann trial “the most interesting and moving work of art of the past ten years”); and Shoshana Felman, *The Juridical Unconscious* (Cambridge, MA: Harvard University Press, 2002) (comparing moments of the trial to “a theater of the absurd”).
19. Vivian Mercer, “The Uneventful Event,” *Irish Times* (February 18, 1956); repr. in *Critical Essays on Samuel Beckett*, ed. L. Butler (Ann Arbor, MI: University of Michigan Scholar Press, 1993), 29.
20. Asch, “Studies of Independence and Conformity,” 46 (italics in original).
21. *Godot*, 12–13 (unbracketed ellipses in original).
22. The reference is to Luke 23:32–43, in which one of the thieves crucified with Christ echoes the crowd’s taunts, while the other acknowledges Christ’s

- divinity and is then promised salvation. The story is absent from the other Evangelists' accounts of the crucifixion in the New Testament.
23. Asch, "Studies of Independence and Conformity," 28.
 24. Ibid., 49.
 25. Ibid., 46.
 26. The confederates are instructed "to announce the judgments clearly and firmly, but not to take issue with the critical subject," and also "not to look directly at him and to refrain from feigning surprise at his answers"; *ibid.*, 3–4.
 27. Ibid., 49 (italics in original).
 28. Asch, "Opinions and Social Pressure."
 29. The characters' present location is unspecified, but all the geographic references in the play are to France.
 30. Charles L. Black, "The Lawfulness of the Segregation Decisions," *Yale Law Journal* 69 (1960): 423–4: "[I]f a whole race of people finds itself confined within a system which is set up and continued for the very purpose of keeping it in an inferior station, and if the question is then solemnly propounded whether such a race is being treated 'equally,' I think we ought to exercise one of the sovereign prerogatives of philosophers — that of laughter."
 31. Klarman, *From Jim Crow to Civil Rights*, ch. 6, offers a recent scholarly treatment with extensive citations to the literature; Kluger, *Simple Justice*, is the leading journalistic account.
 32. The school cases are *Cumming v. Board of Education of Richmond County*, 175 U.S. 528 (1899) (high school); *Gong Lum v. Rice*, 275 U.S. 78 (1927) (grade school); *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938) (law school); *Sipuel v. University of Oklahoma*, 332 U.S. 631 (1948) (law school); *Sweatt v. Painter*, 339 U.S. 629 (1950) (law school); and *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950) (graduate school). The others include *McCabe v. Atcheson, Topeka & Santa Fe Railway*, 235 U.S. 151 (1914).
 33. Klarman, *From Jim Crow to Civil Rights*, 298–300; Kluger, *Simple Justice*, 617.
 34. Kluger, *Simple Justice*, 700–2. On Reed's opposition to racial mixing, see Klarman, *From Jim Crow to Civil Rights*, 300.
 35. The available sources are discussed and quoted in detail in Kluger, *Simple Justice*, 585–750; Tushnet, "What Really Happened in Brown"; and Klarman, *From Jim Crow to Civil Rights*, 290–320. Frankfurter's undated memo to his colleagues, probably written in late 1953, is reproduced in Kluger, *Simple Justice*, 686–8. Jackson's memo of February 15, 1954, which was apparently intended as a draft concurring opinion, is excerpted in *ibid.*, 691–4.
 36. Law clerk E. Barrett Prettyman's written response to Jackson's memo, re-quoted in *ibid.*, 694–5.
 37. Frankfurter memo, quoted in Kluger, *Simple Justice*, 686–7.
 38. *Godot*, 90–1.
 39. On the doubts some of the justices, particularly Frankfurter, had about the appointment of a "politician" with no judicial experience to be Chief Justice, see Kluger, *Simple Justice*, 664; and Tushnet, "What Really Happened in Brown," 1875–6.
 40. "Racial discrimination furnishes grist for the Communist propaganda mills," the Department of Justice claimed in its amicus brief, contending that segregation was giving the country a bad name abroad; Brief of the United States as Amicus Curiae, *Brown v. Board of Education*, October Term 1953, at 6; repr. in *Landmark Briefs and Arguments of the Supreme Court of the United States* vol. 121, ed. P. Kurland and G. Casper (Washington, DC, 1975), 49; Mary Dudziak, "Desegregation as a Cold War Imperative," *Stanford Law Review* 41 (1988): 61.
 41. Jackson memo, quoted in Kluger, *Simple Justice*.
 42. *Godot*, 91.
 43. In interviews afterward, conforming subjects in the Asch experiments invariably underestimate the number of times they gave the group answer.
 44. George Orwell, 1984 (New York, NY: Houghton Mifflin Harcourt, 1949).
 45. Brief of appellees, *Brown v. Board of Education*, October Term 1952.
 46. For example, Festinger's study of end-of-the-world cults in the mid-1950s.
 47. Samuel Beckett, *The Unnameable* (New York, NY: Grove/Atlantic, 1958), 4.
 48. "Marshall's brief starts & ends with sociology"; "The Court's opinion read more like an expert paper on sociology than a Supreme Court opinion." The first quotation is a remark of Justice Jackson's, as reported in Justice Douglas' handwritten notes from the court's conference, quoted in Tushnet, "What Really Happened in Brown," 1907. The second is from James Reston, "A Sociological Decision," *New York Times* (May 18, 1954).
 49. "Dramatic" is often used to describe Kenneth Clark's testimony about the experiments; e.g., Randall Kennedy, "A Reply to Philip Elman," *Harvard Law Review* 100 (1987): 1938, 1946; R. A. Lenhardt, "Understanding the Mark: Race, Stigma, and Equality in Context," *New York University Law Review* 79 (2004): 803, 843.

50. Transcript of *Briggs v. Elliott*, 98 F.Supp. 529 (E.D.S.C., 1951); repr. in Edmond Cahn, "Jurisprudence," *New York University Law Review* 30 (1955): 150, 162–3.
51. Jack M. Balkin, "Rewriting Brown," in *What Brown v. Board of Education Should Have Said*, ed. Jack M. Balkin (New York, NY: New York University Press, 2001), 51; Lucas A. Powe, Jr, *The Warren Court and American Politics* (Cambridge, MA: Belknap/Harvard University Press, 2000), 43.
52. The quotation is from Adorno's study of Beckett; Theodor W. Adorno, "Trying to Understand *Endgame*," *New German Critique* 26 (1982): 119, a translation of the 1958 original.
53. Almost as soon as the play appeared, critics saw it as being, among other things, an elegy for a dead civilization; e.g., Harold Hobson, "Review," *Sunday Times* (August 7, 1955); repr. in Graver and Federman, *Samuel Beckett*, 94. See also the remark of A. Alvarez, quoted in *ibid.*, 110: "The real destructive nihilism acted out in the camps was expressed artistically only in works like Beckett's 'Endgame' or 'Waiting for Godot,' in which the naked unaccommodated man is reduced to the role of helpless, hopeless, impotent comic, who talks and talks and talks in order to postpone for a while the silence of his own desolation."
54. *Godot*, 68–9.
55. Maurice Blanchot, "Review of Beckett's *L'Innommable*," in *Nouvelle Revue Française* (October 1953); repr. in translation in Graver and Federman, *Samuel Beckett*, 119.
56. L. Friedman, ed., *Argument: The Oral Argument before the Supreme Court in Brown v. Board of Education of Topeka, 1952–55* (New York, NY: Chelsea House, 1969), 59.
57. Beckett, "The Unnameable," in *Three Novels by Samuel Beckett* (1965): 386.
58. The quotation is from Alan Schneider, "Waiting for Beckett," in *Beckett at Sixty: A Festschrift*, ed. J. Calder (London: Calder & Boyers, 1967), 38. On his impatience with exegeses of the play, see Michael Worton, "Waiting for *Godot* and *Endgame*: Theatre as Text," in *The Cambridge Companion to Samuel Beckett*, ed. J. Pilling (Cambridge: Cambridge University Press, 1994), 67.
59. Letter to Harold Hobson (1956), in Calder, *Beckett at Sixty*, 34.
60. For example, *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449 (1958); *NAACP v. Button*, 371 U.S. 415 (1963); and *N.Y. Times Co. v. Sullivan*, 376 U.S. 254 (1964).
61. J. W. Peltason, *Fifty-Eight Lonely Men: Southern Federal Judges and School Desegregation* (Urbana, IL: University of Illinois Press, 1961).
62. Genevieve Fabre, "Free Southern Theatre, 1963–1979," *Black American Literature Forum* 17 (1983): 55; Gilbert Moses, John O'Neal, Denise Nicholas, Murray Levy, and Richard Schechner, "Dialogue: Free Southern Theatre," *Tulane Drama Review* 9, no. 4 (1965): 63.
63. Fabre, "Free Southern Theatre," 55.
64. Moses et al., "Dialogue: Free Southern Theatre," 71. The shock effect was so great that the acting company, worried that audiences were being distracted from thinking about the rest of the play, experimented with putting the characters in whiteface; *ibid.*
65. Martin Luther King, Jr, *Why We Can't Wait* (New York, NY: Harper & Row, 1964). King's book, I should say, does not mention *Godot*. For the anecdote about the audience chiming in, see Moses et al., "Dialogue: Free Southern Theatre," 70.

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